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Article 42.12, Code of Criminal Procedure,
1965, as amended, by amending Section 3a
and adding Section 6c; amending the
Misdemeanor Adult Probation and Supervision
Law (Article 42.13, Code of Criminal Procedure,
1965); by amending Sections 3a and 6c; and
amending Section 24, Chapter 173, Acts of the 44th
Legislature Regular Session, 1941, as amended
(Article 6687b, Vernon's Texas Civil Statutes).

By: Cyprian

S.B. No. 368

A BILL TO BE ENTITLED

AN ACT

relating to ^{education} rehabilitation programs as a condition of probation for
persons convicted of driving while intoxicated or under the influence
of intoxicating liquor or controlled substance or drug; amending
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3a, Article 42.12, Code of Criminal
Procedure, 1965, as amended, is amended to read as follows:

Section 3a. Where there is a conviction in any court of this
State and the punishment assessed by the jury shall not exceed ten
years, the jury may recommend probation for a period of any term of
years authorized for the offense for which the defendant was
convicted, but in no event for more than ten years, upon written
sworn motion made therefor by the defendant, filed before the trial
begins. When the jury recommends probation, it may also assess a
fine applicable to the offense for which the defendant was
convicted. When the trial is to a jury, and the defendant has no
counsel, the court shall inform the defendant of his right to make
such motion, and the court shall appoint counsel to prepare and
present same, if desired by the defendant. In no case shall ¹/₂
probation be recommended by the jury except when the sworn motion
and proof shall show, and the jury shall find in their verdict that
the defendant has never before been convicted of a felony in this
or any other State. This law is not to be construed as preventing
the jury from passing on the guilt of the defendant, but he may
enter a plea of not guilty. In all eligible cases, probation shall

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1 be granted by the court, if the jury recommends it in their
2 verdict, for the period recommended by the jury.

3 "If probation is granted by the jury the court may impose only
4 those conditions which are set forth in Section 6, 6a, 6b, or 6c
5 hereof."

6 SECTION 2. Article 42.12, Chapter 42, Code of Criminal
7 Procedure, 1965, as amended, is amended by adding Section 6c to
8 read as follows:

9 "Section 6c. If a court places on probation a person convicted
10 of driving while intoxicated or under the influence of intoxicating
11 liquor, the court shall require, as a condition of the probation,
12 that the defendant attend an educational program designed to
13 rehabilitate persons who have driven while intoxicated. The
14 program must be approved by the Department of Public Safety, the
15 Texas Commission on Alcoholism, or the Office of Traffic Safety.
16 If the defendant by a motion in writing shows good cause, the judge
17 may waive the requirement. The judge shall set out the finding of
18 good cause in the probation order."

19 SECTION 3. Section 3a, ^{Misdemeanor Adult Probation and Supervision Law} Article 42.13, Code of Criminal
20 Procedure, 1965, as amended, is amended to read as follows: 3/3

21 "Section 3a. Where there is a conviction in any court of this
22 state and the punishment assessed by the jury shall be by
23 imprisonment in jail or by a fine or by both such fine and
24 imprisonment, the jury may recommend probation for a period of the
25 maximum imprisonment applicable to such offense of which the
26 defendant is convicted, upon sworn motion made therefor by the
27 defendant, filed before the penalty stage of the trial begins.

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1 When the jury recommends probation, it may recommend that the
2 imprisonment or fine or both such fine and imprisonment found in
3 its verdict may be probated. When the trial is to a jury and the
4 defendant has no counsel, the court shall inform the defendant of
5 his right to make such motion, and the court shall appoint counsel
6 to prepare and present same, if desired by the defendant. In no
7 case shall probation be recommended by the jury except when the
8 defendant, before the trial began, had filed a sworn statement that
9 the defendant has never before been convicted of a felony, and
10 after conviction and before the penalty stage of the trial began,
11 the defendant shall have filed a sworn motion for probation and the
12 proof shall show and the jury shall find in their verdict that the
13 defendant has never before been convicted of a felony in this or
14 any other state. This law is not to be construed as preventing the
15 jury from passing on the guilt of the defendant, but the defendant
16 may enter a plea of not guilty. In all eligible cases, probation
17 shall be granted by the court, if the jury recommends it in their
18 verdict.

19 "If probation is granted by the jury, the court may impose
20 only those conditions which are set out in Section 6, 6a, 6b, or 6c³/₄
21 hereof."

22 *Misdemeanor Adult Probation and Supervision Law*
SECTION 4. Section 6c, ¹/₄ Article 42.13, Code of Criminal
23 Procedure, 1965¹/₂, is amended to read as follows:

24 ¹/₂ Sec. 6c. If a person convicted of an offense under Article
25 6701¹/₂-1, Revised Civil Statutes of Texas, 1925, as amended, is
26 placed on probation, the court shall [may] require, as a condition
27 of the probation, that the defendant attend an educational program

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1 approved by the Texas Commission on Alcoholism, the [Texas]
2 Department of Public Safety, or the Office of Traffic Safety
3 designed to rehabilitate persons who have driven while intoxicated.
4 The judge may [~~shall~~] waive this requirement, however, if the
5 defendant by a motion in writing shows good cause [~~no-program-is~~
6 ~~operated-within-60-miles-of-the-defendant's-residence~~]. The judge
7 shall set out the finding of good cause in the probation order. //

8 SECTION 5. Section 24, Chapter 173, Acts of the 47th
9 Legislature, Regular Session, 1941, as amended (Article 6687b,
10 Vernon's Texas Civil Statutes), is amended to read as follows:

11 "Sec^{tion} 24. AUTOMATIC SUSPENSION OF LICENSE. (a) The license
12 of any person shall be automatically suspended upon final
13 conviction of any of the following offenses:

14 "1. Negligent homicide resulting from the operation of a
15 motor vehicle;

16 "2. Driving a motor vehicle while under the influence of
17 intoxicating liquor or a controlled substance or drug to a degree
18 that renders the person incapable of safely operating a motor^d/₅
19 vehicle, except as provided by Subsection (d) of this Section
20 [narcotic-drugs];

21 "3. Any offense punishable as a felony under the motor
22 vehicle laws of this State;

23 "4. A conviction of a driver of a motor vehicle involved in
24 an accident or collision, upon a charge of failure to stop, render
25 aid, and disclose his identity at the scene of said accident or
26 collision;

27 "5. A conviction upon a charge of aggravated assault upon the

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1 person by means of motor vehicle, as provided by law.

2 (b) The suspension above provided shall in the first
3 instance be for a period of twelve (12) months. In event any
4 license shall be suspended under the provision of this Section for
5 a subsequent time, said subsequent suspension shall be for a period
6 of eighteen (18) months.

7 (c) The suspension of any license shall be automatically
8 extended upon licensee being convicted of operating a motor vehicle
9 while the license of such person is suspended; such extended period
10 of suspension to be for a like period as the original suspension,
11 and is in addition to any other penalty assessed, as provided in
12 this Act.

13 (d) If a person is convicted of the offense of driving a
14 motor vehicle while under the influence of intoxicating liquor, the
15 person's license shall not be automatically suspended if the court
16 places the person on probation and either requires as a condition
17 of probation that the person attend an educational program designed
18 to rehabilitate persons who have driven while intoxicated as
19 provided by Article 42.12 or Article 42.13, Code of Criminal
20 Procedure, 1965, or waives that requirement. The probation officer
21 shall report to the court whether or not the person has completed
22 the program. If the person fails to complete the program, the
23 person's license shall be automatically suspended as provided by
24 Subdivision (2) of this Section. 5/6

25 SECTION 6. This Act takes effect September 1, 1981, and
26 applies only to probation and license suspension for offenses
27 committed on or after that date. Probation under Article 42.12 or

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1 42.13, Code of Criminal Procedure, 1965, as amended, and license
2 suspension under Section 24, Chapter 173, Acts of the 47th
3 Legislature, Regular Session, 1941, as amended (Article 6687b,
4 Vernon's Texas Civil Statutes), for an offense committed before the
5 effective date of this Act are governed by the law as it existed
6 when the offense occurred, and that law is continued in effect for
7 that purpose. For the purpose of this Act, an offense is committed
8 before the effective date of this Act if any element of the offense
9 occurs before the effective date.

10 SECTION 7. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE SUBSTITUTE FORM

March 25, 1987 Austin, Texas
Date of report to Senate

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on Jurisdiction to which was referred
S. B. No. 3128, have had the same under consideration, and I am instructed to report it back to the
Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu
thereof do pass and be printed.

M. A. J.
Chairman

Paper clip TWO copies of the Committee Substitute and TWO copies of this form to the original bill and retain one copy of this form for your file.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

February 23, 1981

Honorable Oscar H. Mauzy, Chairman
Committee on Jurisprudence
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 368
By: Caperton

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Senate Bill No. 368 (relating to rehabilitation programs as a condition of probation for persons convicted of driving while intoxicated) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The bill, should it be enacted, would require a person convicted of driving while intoxicated to attend a rehabilitation program as a condition of probation.

Currently, federal monies are being made available to the Commission on Alcoholism from the State Department of Highways and Public Transportation as seed monies to implement new and upgrade existing rehabilitation programs to meet the approved State-endorsed standards and criteria. It is anticipated that the federal funds will be made available to local programs and new agencies and organizations which desire to implement a new program through fiscal year 1983. All programs are expected to become self-supporting locally through the charge of fees to probationers attending the mandatory DWI Education Program classes.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Cost Out of Federal Funds</u>	<u>Cost of Administration Out of the General Revenue Fund</u>	<u>Change in Number of State Employees from FY 1981</u>
1982	\$ 300,000	\$ -0-	+2
1983	300,000	-0-	+2
1984	-0-	70,910	+2
1985	-0-	70,910	+2
1986	-0-	70,910	+2

Similar annual costs would continue as long as the provisions of the bill are in effect.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

Source: Texas Commission on Alcoholism; Texas Department of Public Safety; Texas Adult Probation Commission; and LBB Staff: TK, HES, LG, LV

and 6c of Article 42.13; and amending
Section 24, Chapter 173, Acts of the 47th
Legislature, Regular Session, 1941, as amended
(Article 6687b, Vernon's Texas Civil Statutes).
MAR 16 1987

By: Caperton

S.B. No. 368

Substitute the following for S.B. No. 368:

By: Caperton

C.S.S.B. No. 368

A BILL TO BE ENTITLED

AN ACT

for certain convictions and

relating to rehabilitation programs as a condition of probation for

persons convicted of driving while intoxicated; amending the Code of
Criminal Procedure, 1965, as amended, by amending Sections 3a,
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Misdemeanor Adult Probation and Supervision Law

SECTION 1. Section 3a, (Article 42.13, Code of Criminal
Procedure, 1965), as amended, is amended to read as follows:

"Section 3a. Where there is a conviction in any court of this
state and the punishment assessed by the jury shall be by
imprisonment in jail or by a fine or by both such fine and
imprisonment, the jury may recommend probation for a period of the
maximum imprisonment applicable to such offense of which the
defendant is convicted, upon sworn motion made therefor by the
defendant, filed before the penalty stage of the trial begins.
When the jury recommends probation, it may recommend that the
imprisonment or fine or both such fine and imprisonment found in
its verdict may be probated. *Insert from am. #1 (1)* When the trial is to a jury and the
defendant has no counsel, the court shall inform the defendant of
his right to make such motion, and the court shall appoint counsel
to prepare and present same, if desired by the defendant. In no
case shall probation be recommended by the jury except when the
defendant, before the trial began, had filed a sworn statement that
the defendant has never before been convicted of a felony, and
after conviction and before the penalty stage of the trial began,
the defendant shall have filed a sworn motion for probation and the
proof shall show and the jury shall find in their verdict that the
defendant has never before been convicted of a felony in this or
any other state. This law is not to be construed as preventing the

3/25/81
4/1/81

1 jury from passing on the guilt of the defendant, but the defendant
 2 may enter a plea of not guilty. In all eligible cases, probation
 3 shall be granted by the court, if the jury recommends it in their
 4 verdict.

5 "If probation is granted by the jury, the court may impose
 6 only those conditions which are set out in Section 6, 6a, 6b, or 6c
 7 hereof. The court may impose any one or all of those conditions.

8 *Misdemeanor Adult Probation and Supervision Laws*
 SECTION 2. Section 6c, Article 42.13, Code of Criminal
 9 Procedure, 1965, as amended is amended to read as follows:

10 "Section 6c. If a person convicted of an offense under Article
 11 6701^{b-1}, Revised Civil Statutes of Texas, 1925, as amended, is
 12 placed on probation, the court shall [may] require, as a condition
 13 of the probation, that the defendant attend and successfully
 14 complete an educational program jointly approved by the Texas
 15 Commission on Alcoholism, the Texas Department of Public Safety,
 16 the Traffic Safety Section of the State Department of Highways and
 17 Public Transportation, and the Texas Adult Probation Commission [or
 18 the Office of Traffic Safety] designed to rehabilitate persons who
 19 have driven while intoxicated. The Texas Commission on Alcoholism
 20 shall publish the jointly approved rules and regulations and shall
 21 monitor and coordinate the educational programs. Persons who have
 22 successfully completed an approved educational program or who are
 23 currently under an order to attend an educational program shall not
 24 be eligible for attendance upon a subsequent offense. The judge may
 25 [shall] waive the educational program [this] requirement, however,
 26 if the defendant by a motion in writing shows good cause [no
 27 program--is-operated-within-60-miles-of-the-defendant's-residence].
 28 In determining good cause, the judge may consider, but is not
 29 limited to: the offender's school and work schedule, the
 30 offender's health, the distance which the offender must travel to

1 attend an educational program, and the fact that the offender
 2 resides out-of-state, has no valid driver's license or does not
 3 have access to transportation. The judge shall set out the finding
 4 of good cause in the judgement. If a person is required, as a
 5 condition of probation to attend an educational program, the Court
 6 clerk shall immediately report such fact to the Texas Department of
 7 Public Safety for inclusion in the person's driving record. Upon
 8 the successful completion of the educational program, the person
 9 shall give notice to the Court clerk. The Court clerk shall then
 10 report the date of successful completion of the educational program
 11 to the Texas Department of Public Safety for inclusion in the
 12 person's driving record. No report of the offense for which the
 13 educational program was required as a^{2/}condition of probation shall
 14 be made to the Texas Department of Public Safety unless the person
 15 fails to comply with the terms of the probation order. Information
 16 regarding the required attendance or successful completion of an
 17 educational program may not be used for any purpose other than to
 18 determine eligibility under this section."

19 SECTION 3. Section 24, Chapter 173, Acts of the 47th
 20 Legislature, Regular Session, 1941, as amended (Article 6687b,
 21 Vernon's Texas Civil Statutes), is amended by adding Subsection (d)
 22 to read as follows:

23 "(d) If a person is convicted of the offense of driving a
 24 motor vehicle under the influence of intoxicating liquor, the
 25 person's license shall not be automatically suspended if the Court
 26 places the person on probation and either requires as a condition
 27 of probation that the person attend an educational program designed
 28 to rehabilitate persons who have driven while intoxicated as
 29 provided by Article 42.13, Code of Criminal Procedure, 1965, or
 30 *Insert from Am. 11 D (2)*
waives that requirement. The probation officer shall report to the

1 court whether or not the person has completed the program. If the
2 person fails to complete the program, the person's license shall be
3 automatically suspended as provided by ^{Subdivision (2) of} Subsection (a)(2) of this
4 Section. "

5 SECTION 4. This Act takes effect January 1, 1982, and
6 applies only to probation and license suspension for offense
7 committed on or after that date. Probation under Article 42.13,
8 Code of Criminal Procedure, 1965, as amended, and license
9 suspension under Section 24, Chapter 173, Acts of the 47th
10 Legislature, Regular Session, 1941, as amended (Article 6687b,
11 Vernon's Texas Civil Statutes), for an offense committed before the
12 effective date of this Act are governed by the law as it existed
13 when the offense occurred, and that law is continued in effect for
14 that purpose. For the purpose of this Act, an offense is committed
15 before the effective date of this Act if any element of the offense
16 occurs before the effective date.

17 SECTION 5. The importance of this legislation and the
18 crowded condition of the calendars in both houses create an
19 emergency and an imperative public necessity that the
20 constitutional rule requiring bills to be read on three several
21 days in each house be suspended, and this rule is hereby suspended.

MAR 16 1981

AMENDMENT NO. 1

BY [Signature]

1 Amend C.S.S.B. 368 as follows:

2 (1) On page 1, line 24, insert between "probated" and the
3 period (".") the following:

4 and may recommend that any operator's, commercial operator's, or
5 chauffeur's license issued to the defendant under Chapter 173,
6 Acts of the 47th Legislature, Regular Session, 1941, ^{as amended} (Article
7 6687b, Vernon's Texas Civil Statutes), not be suspended"

8 (2) On page 2, line 29, insert between "requirement" and
9 the period (".") the following:

10 " or the jury recommends, under Section 3a, Article 42.13, Code
11 of Criminal Procedure, 1965, ^{as amended} probation and no suspension of the
12 person's license"

13
14 ^{up 3} →

ADOPTED

APR 1 1981

[Signature]
Secretary of the Senate

am. #1

Amend the cantion to conform to the
body of the bill

ADOPTED

APR 1 1981

Barry King
Secretary of the Senate

April 1 1981 Engrossed
Datsyn Saw
Engrossing Clerk

I certify that the attached is a true and correct
copy of SB 368, which was
received from the Senate on APR 2 1981 and
referred to the Committee on Criminal

Justice
Chief Clerk of the House

By: Caperton
(Salinas)

S.B. No. 368

A BILL TO BE ENTITLED

AN ACT

relating to conditions of probation for certain convictions and for persons convicted of driving while intoxicated; amending the Code of Criminal Procedure, 1965, as amended, by amending Sections 3a and 6c of Article 42.13; and amending Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3a, Misdemeanor Adult Probation and Supervision Law (Article 42.13, Code of Criminal Procedure, 1965), is amended to read as follows:

"Section 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated and may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), not be suspended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of

1 his right to make such motion, and the court shall appoint counsel
2 to prepare and present same, if desired by the defendant. In no
3 case shall probation be recommended by the jury except when the
4 defendant, before the trial began, had filed a sworn statement that
5 the defendant has never before been convicted of a felony, and
6 after conviction and before the penalty stage of the trial began,
7 the defendant shall have filed a sworn motion for probation and the
8 proof shall show and the jury shall find in their verdict that the
9 defendant has never before been convicted of a felony in this or
10 any other state. This law is not to be construed as preventing the
11 jury from passing on the guilt of the defendant, but the defendant
12 may enter a plea of not guilty. In all eligible cases, probation
13 shall be granted by the court, if the jury recommends it in their
14 verdict.

15 "If probation is granted by the jury, the court may impose
16 only those conditions which are set out in Section 6, 6a, 6b, or 6c
17 hereof. The court may impose any one or all of those conditions."

18 SECTION 2. Section 6c, Misdemeanor Adult Probation and
19 Supervision Law (Article 42.13, Code of Criminal Procedure, 1965),
20 is amended to read as follows:

21 "Section 6c. If a person convicted of an offense under
22 Article 67011-1, Revised Civil Statutes of Texas, 1925, as amended,
23 is placed on probation, the court shall [~~may~~] require, as a
24 condition of the probation, that the defendant attend and
25 successfully complete an educational program jointly approved by
26 the Texas Commission on Alcoholism, the Texas Department of Public
27 Safety, the Traffic Safety Section of the State Department of

1 Highways and Public Transportation, and the Texas Adult Probation
2 Commission [~~er--the--Office--of--Traffic--Safety~~] designed to
3 rehabilitate persons who have driven while intoxicated. The Texas
4 Commission on Alcoholism shall publish the jointly approved rules
5 and regulations and shall monitor and coordinate the educational
6 programs. Persons who have successfully completed an approved
7 educational program or who are currently under an order to attend
8 an educational program shall not be eligible for attendance upon a
9 subsequent offense. The judge may [~~shall~~] waive the educational
10 program [~~this~~] requirement, however, if the defendant by a motion
11 in writing shows good cause [~~no-program-is-operated-within-60-miles~~
12 ~~of--the--defendant's--residence~~]. In determining good cause, the
13 judge may consider, but is not limited to: the offender's school
14 and work schedule, the offender's health, the distance which the
15 offender must travel to attend an educational program, and the fact
16 that the offender resides out-of-state, has no valid driver's
17 license or does not have access to transportation. The judge shall
18 set out the finding of good cause in the judgement. If a person is
19 required, as a condition of probation to attend an educational
20 program, the court clerk shall immediately report such fact to the
21 Texas Department of Public Safety for inclusion in the person's
22 driving record. Upon the successful completion of the educational
23 program, the person shall give notice to the court clerk. The
24 court clerk shall then report the date of successful completion of
25 the educational program to the Texas Department of Public Safety
26 for inclusion in the person's driving record. No report of the
27 offense for which the educational program was required as a

condition of probation shall be made to the Texas Department of Public Safety unless the person fails to comply with the terms of the probation order. Information regarding the required attendance or successful completion of an educational program may not be used for any purpose other than to determine eligibility under this section."

SECTION 3. Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

"(d) If a person is convicted of the offense of driving a motor vehicle under the influence of intoxicating liquor, the person's license shall not be automatically suspended if the court places the person on probation and either requires as a condition of probation that the person attend an educational program designed to rehabilitate persons who have driven while intoxicated as provided by Article 42.13, Code of Criminal Procedure, 1965, or waives that requirement, or the jury recommends, under Section 3a, Article 42.13, Code of Criminal Procedure, 1965, as amended, probation and no suspension of the person's license. The probation officer shall report to the court whether or not the person has completed the program. If the person fails to complete the program, the person's license shall be automatically suspended as provided by Subdivision (2) of Subsection (a) of this section."

SECTION 4. This Act takes effect January 1, 1982, and applies only to probation and license suspension for offense committed on or after that date. Probation under Article 42.13,

1 Code of Criminal Procedure, 1965, as amended, and license
2 suspension under Section 24, Chapter 173, Acts of the 47th
3 Legislature, Regular Session, 1941, as amended (Article 6687b,
4 Vernon's Texas Civil Statutes), for an offense committed before the
5 effective date of this Act are governed by the law as it existed
6 when the offense occurred, and that law is continued in effect for
7 that purpose. For the purpose of this Act, an offense is committed
8 before the effective date of this Act if any element of the offense
9 occurs before the effective date.

10 SECTION 5. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1ST PRINTING

F

By: Caperton
(Salinas)

S.B. No. 368

A BILL TO BE ENTITLED

AN ACT

relating to conditions of probation for certain convictions and for persons convicted of driving while intoxicated; amending the Code of Criminal Procedure, 1965, as amended, by amending Sections 3a and 6c of Article 42.13; and amending Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3a, Misdemeanor Adult Probation and Supervision Law (Article 42.13, Code of Criminal Procedure, 1965), is amended to read as follows:

"Section 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated and may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), not be suspended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of

1 his right to make such motion, and the court shall appoint counsel
2 to prepare and present same, if desired by the defendant. In no
3 case shall probation be recommended by the jury except when the
4 defendant, before the trial began, had filed a sworn statement that
5 the defendant has never before been convicted of a felony, and
6 after conviction and before the penalty stage of the trial began,
7 the defendant shall have filed a sworn motion for probation and the
8 proof shall show and the jury shall find in their verdict that the
9 defendant has never before been convicted of a felony in this or
10 any other state. This law is not to be construed as preventing the
11 jury from passing on the guilt of the defendant, but the defendant
12 may enter a plea of not guilty. In all eligible cases, probation
13 shall be granted by the court, if the jury recommends it in their
14 verdict.

15 "If probation is granted by the jury, the court may impose
16 only those conditions which are set out in Section 6, 6a, 6b, or 6c
17 hereof. The court may impose any one or all of those conditions."

18 SECTION 2. Section 6c, Misdemeanor Adult Probation and
19 Supervision Law (Article 42.13, Code of Criminal Procedure, 1965),
20 is amended to read as follows:

21 "Section 6c. If a person convicted of an offense under
22 Article 67011-1, Revised Civil Statutes of Texas, 1925, as amended,
23 is placed on probation, the court shall [~~may~~] require, as a
24 condition of the probation, that the defendant attend and
25 successfully complete an educational program jointly approved by
26 the Texas Commission on Alcoholism, the Texas Department of Public
27 Safety, the Traffic Safety Section of the State Department of

1 Highways and Public Transportation, and the Texas Adult Probation
2 Commission [~~er--the--Office--of--Traffic--Safety~~] designed to
3 rehabilitate persons who have driven while intoxicated. The Texas
4 Commission on Alcoholism shall publish the jointly approved rules
5 and regulations and shall monitor and coordinate the educational
6 programs. Persons who have successfully completed an approved
7 educational program or who are currently under an order to attend
8 an educational program shall not be eligible for attendance upon a
9 subsequent offense. The judge may [~~shall~~] waive the educational
10 program [~~this~~] requirement, however, if the defendant by a motion
11 in writing shows good cause [~~no-program-is-operated-within-60-miles~~
12 ~~of--the--defendant's--residence~~]. In determining good cause, the
13 judge may consider, but is not limited to: the offender's school
14 and work schedule, the offender's health, the distance which the
15 offender must travel to attend an educational program, and the fact
16 that the offender resides out-of-state, has no valid driver's
17 license or does not have access to transportation. The judge shall
18 set out the finding of good cause in the judgement. If a person is
19 required, as a condition of probation to attend an educational
20 program, the court clerk shall immediately report such fact to the
21 Texas Department of Public Safety for inclusion in the person's
22 driving record. Upon the successful completion of the educational
23 program, the person shall give notice to the court clerk. The
24 court clerk shall then report the date of successful completion of
25 the educational program to the Texas Department of Public Safety
26 for inclusion in the person's driving record. No report of the
27 offense for which the educational program was required as a

1 condition of probation shall be made to the Texas Department of
 2 Public Safety unless the person fails to comply with the terms of
 3 the probation order. Information regarding the required attendance
 4 or successful completion of an educational program may not be used
 5 for any purpose other than to determine eligibility under this
 6 section."

7 SECTION 3. Section 24, Chapter 173, Acts of the 47th
 8 Legislature, Regular Session, 1941, as amended (Article 6687b,
 9 Vernon's Texas Civil Statutes), is amended by adding Subsection (d)
 10 to read as follows:

11 "(d) If a person is convicted of the offense of driving a
 12 motor vehicle under the influence of intoxicating liquor, the
 13 person's license shall not be automatically suspended if the court
 14 places the person on probation and either requires as a condition
 15 of probation that the person attend an educational program designed
 16 to rehabilitate persons who have driven while intoxicated as
 17 provided by Article 42.13, Code of Criminal Procedure, 1965, or
 18 waives that requirement, or the jury recommends, under Section 3a,
 19 Article 42.13, Code of Criminal Procedure, 1965, as amended,
 20 probation and no suspension of the person's license. The probation
 21 officer shall report to the court whether or not the person has
 22 completed the program. If the person fails to complete the
 23 program, the person's license shall be automatically suspended as
 24 provided by Subdivision (2) of Subsection (a) of this section."

25 SECTION 4. This Act takes effect January 1, 1982, and
 26 applies only to probation and license suspension for offense
 27 committed on or after that date. Probation under Article 42.13,

1 Code of Criminal Procedure, 1965, as amended, and license
2 suspension under Section 24, Chapter 173, Acts of the 47th
3 Legislature, Regular Session, 1941, as amended (Article 6687b,
4 Vernon's Texas Civil Statutes), for an offense committed before the
5 effective date of this Act are governed by the law as it existed
6 when the offense occurred, and that law is continued in effect for
7 that purpose. For the purpose of this Act, an offense is committed
8 before the effective date of this Act if any element of the offense
9 occurs before the effective date.

10 SECTION 5. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Bill Clayton
Speaker of the House of Representatives

4/8/81
(date)

Sir:

We, your COMMITTEE ON CRIMINAL JURISPRUDENCE, to whom was referred SB 368, have had the same under consideration and beg to report back with the recommendation that it (measure)

- (☒) do pass, without amendment.
() do pass, with amendment(s).
() do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (☒) yes () no

An author's fiscal statement was requested. () yes (☒) no

An actuarial analysis was requested. () yes (☒) no

~~The Committee recommends that this measure be placed on the (Local) or (Consent) Calendar.~~

This measure (☒) proposes new law.
(☒) amends existing law.

House Sponsor of Senate Measure Rep. Salinas

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Nabers, Ch.				<input checked="" type="checkbox"/>
Cofer, V.C.	<input checked="" type="checkbox"/>			
Hernandez, C.B.O.	<input checked="" type="checkbox"/>			
Browder	<input checked="" type="checkbox"/>			
Burnett	<input checked="" type="checkbox"/>			
Hudson				<input checked="" type="checkbox"/>
Jones	<input checked="" type="checkbox"/>			
Maloney				<input checked="" type="checkbox"/>
Smith, T.	<input checked="" type="checkbox"/>			
Uher				<input checked="" type="checkbox"/>
Waldrop				<input checked="" type="checkbox"/>

Total
_____ aye
_____ nay
_____ present, not voting
_____ absent

Nabers
CHAIRMAN
Reynolds
COMMITTEE COORDINATOR

BILL ANALYSIS

S.B. 368 by Caperton (Salinas-House Sponsor)

Background Information:

Articles 42.12 and 42.13, Code of Criminal Procedure, provide for the imposition of certain conditions of probation. The judge is not limited to the conditions listed within the statutes. He may include or delete statutory conditions and he may include any additional conditions which he deems necessary. Some jurisdictions presently require probationers who have been found guilty of D.W.I. to attend educational programs designed to rehabilitate persons who have driven while intoxicated. Attendance at such programs is not required under present law.

What the Bill Proposes to Do:

The bill proposes to require that persons found guilty of D.W.I. be required to attend educational programs designed to rehabilitate persons who have driven while intoxicated as a condition of probation. Upon final conviction of D.W.I. and the granting of probation a defendant would be allowed to retain his license under this bill.

Section by Section Analysis:

Section 1. Amends Section 3a, Article 42.13, Code of Criminal Procedure, by providing that upon conviction of D.W.I. a jury may recommend that a person's driver's license not be suspended and that he be placed under probation subject to the applicable sections of the Article.

Section 2. Amends Section 6c, Article 42.13, Code of Criminal Procedure, by providing that a person probated for D.W.I. must be required to attend an educational program designed to rehabilitate persons who have driven while intoxicated. The program must be approved by D.P.S., Texas Commission on Alcoholism, State Department of Highways and Public Transportation and the Adult Probation Commission. The judge would be able to waive this requirement for good cause shown.

Section 3. Amends Article 6687b, V.T.C.S., by providing that a defendant's driver's license is not automatically suspended if he is placed on probation and required to attend an educational program.

Section 4. Effective date (September 1, 1981) and Applicability Clause.

Section 5. Emergency Clause.

Rulemaking Authority:

It is the committee's opinion that this bill does not delegate rulemaking authority to a state officer, agency, department or institution.

Summary of Committee Action:

The house companion bill was presented in public hearing and at the request of the author, the senate bill was considered by the committee. The committee reported the senate bill favorably by a vote of 6 ayes, 0 nays, 0 present, not voting and 5 absent, on April 8, 1981.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 17, 1981

Honorable Lynn Nabers, Chairman
Committee on Criminal Jurisprudence
House of Representatives
Austin, Texas

In Re: Senate Bill No. 368, as engrossed
By: Caperton

Sir:

In response to your request pursuant to House Rules, Section 3.119, this office finds the fiscal implications of Senate Bill No. 368, as engrossed (relating to conditions of probation for certain convictions and for persons convicted of driving while intoxicated) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The bill, should it be enacted, would require a person convicted of driving while intoxicated to attend a rehabilitation program as a condition of probation.

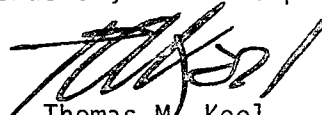
Currently, federal monies are being made available to the Commission on Alcoholism from the State Department of Highways and Public Transportation as seed monies to implement new and upgrade existing rehabilitation programs to meet the approved State-endorsed standards and criteria. It is anticipated that the federal funds will be made available to local programs and new agencies and organizations which desire to implement a new program through fiscal year 1983. All programs are expected to become self-supporting locally through the charge of fees to probationers attending the mandatory DWI Education Program classes.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

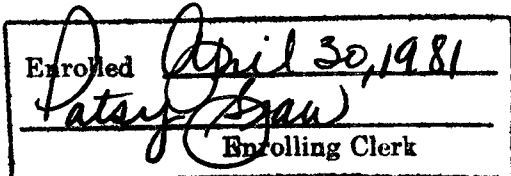
<u>Fiscal Year</u>	<u>Cost Out of Federal Funds</u>	<u>Cost of Administration Out of the General Revenue Fund</u>	<u>Change in Number of State Employees from FY 1981</u>
1982	\$300,000	\$28,126	+2
1983	300,000	28,097	+2
1984	-0-	99,007	+4
1985	-0-	99,007	+4
1986	-0-	99,007	+4

Similar annual costs would continue as long as the provisions of the bill are in effect.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

Source: Texas Commission on Alcoholism; Texas Department of Public Safety;
Texas Adult Probation Commission; and LBB Staff: TK, HES, LG, NH



S.B. No. 368

AN ACT

relating to conditions of probation for certain convictions and for persons convicted of driving while intoxicated; amending the Code of Criminal Procedure, 1965, as amended, by amending Sections 3a and 6c of Article 42.13; and amending Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3a, Misdemeanor Adult Probation and Supervision Law (Article 42.13, Code of Criminal Procedure, 1965), is amended to read as follows:

"Section 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated and may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), not be suspended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of

1 his right to make such motion, and the court shall appoint counsel
2 to prepare and present same, if desired by the defendant. In no
3 case shall probation be recommended by the jury except when the
4 defendant, before the trial began, had filed a sworn statement that
5 the defendant has never before been convicted of a felony, and
6 after conviction and before the penalty stage of the trial began,
7 the defendant shall have filed a sworn motion for probation and the
8 proof shall show and the jury shall find in their verdict that the
9 defendant has never before been convicted of a felony in this or
10 any other state. This law is not to be construed as preventing the
11 jury from passing on the guilt of the defendant, but the defendant
12 may enter a plea of not guilty. In all eligible cases, probation
13 shall be granted by the court, if the jury recommends it in their
14 verdict.

15 "If probation is granted by the jury, the court may impose
16 only those conditions which are set out in Section 6, 6a, 6b, or 6c
17 hereof. The court may impose any one or all of those conditions."

18 SECTION 2. Section 6c, Misdemeanor Adult Probation and
19 Supervision Law (Article 42.13, Code of Criminal Procedure, 1965),
20 is amended to read as follows:

21 "Section 6c. If a person convicted of an offense under
22 Article 67011--1, Revised Civil Statutes of Texas, 1925, as
23 amended, is placed on probation, the court shall [may] require, as
24 a condition of the probation, that the defendant attend and
25 successfully complete an educational program jointly approved by
26 the Texas Commission on Alcoholism, the Texas Department of Public
27 Safety, the Traffic Safety Section of the State Department of

his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

"If probation is granted by the jury, the court may impose only those conditions which are set out in Section 6, 6a, 6b, or 6c hereof. The court may impose any one or all of those conditions."

SECTION 2. Section 6c, Misdemeanor Adult Probation and Supervision Law (Article 42.13, Code of Criminal Procedure, 1965), is amended to read as follows:

"Section 6c. If a person convicted of an offense under Article 67011-1, Revised Civil Statutes of Texas, 1925, as amended, is placed on probation, the court shall [~~may~~] require, as a condition of the probation, that the defendant attend and successfully complete an educational program jointly approved by the Texas Commission on Alcoholism, the Texas Department of Public Safety, the Traffic Safety Section of the State Department of

RP
S.B. No. 368

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 368 passed the Senate on April 1, 1981, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 368 passed the House on April 30, 1981, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT relating to rehabilitation programs as a condition of probation for persons convicted of driving while intoxicated.

FEB 3 1981

Filed with the Secretary of the Senate

FEB 4 1981

Read, referred to Committee on JURISPRUDENCE

Reported favorably.

MAR 25 1981

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

APR 1 1981

Senate and Constitutional Rules to permit consideration suspended by

unanimous consent

____ years, ____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of ____ yeas, ____ nays.

Read second time and amended ordered engrossed.
~~passed to third reading.~~

APR 1 1981

Caption ordered amended to conform to body of bill.

APR 1 1981

Senate and Constitutional 3-Day Rules suspended by vote of
30 yeas, 0 nays to place bill on third reading and final passage.

APR 1 1981

Read third time and passed by a viva-voce vote
____ yeas, ____ nays.

OTHER ACTION:

Betty King

Secretary of the Senate

April 1, 1981

Engrossed

April 2, 1981

Sent to HOUSE

Patsy Law

ENGROSSING CLERK

APR 2 1981

Received from the Senate

APR 6 1981

Read first time and referred to Committee on Criminal Jurisprudence

4-8-81

Reported favorably ~~amended~~, sent to Printer at 12:20 pm

APR 21 1981

Printed and Distributed 11:54 A.M. APR 20 1981

APR 21 1981

Sent to Committee on Calendars 12:40 p.m.

APR 29 1981

Read Second time (~~amended~~): passed to third reading (~~failed~~)

by (Non-Record Vote) Record Vote of ____ yeas, ____ nays

Present, not voting

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of ____ yeas ____ nays ____ present not voting.

APR 30 1981

Read third time (~~amended~~); finally passed (~~failed~~) by a
(Non-Record Vote) Record Vote of ____ yeas ____ nays
present not voting

Caption ordered amended to conform to body of bill.

APR 30 1981

Returned to Senate.

Betty Murray

Chief Clerk of the House

APR 30 1981

RETURNED FROM HOUSE

1961 APR 21 AM 11:54

HOUSE OF REPRESENTATIVES

12

12